

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
TENNESSEE

COX'S PARADISE LLC as
ASSIGNEE
Plaintiff

v.

NORTHFIELD INSURANCE COMPANY
Defendant

)
)
) No.: 2:22-cv-2283-MSN-atc
)

**FIRST AMENDED COMPLAINT TO COMPEL APPRAISAL AND TO BREACH
CONTRACT**

Comes now, Plaintiff, by and through undersigned counsel, and files this its First Amended Complaint pursuant to the Court's instructions of May 30, 2023 [DE 31] and requests this Honorable Court to select an umpire and order the carrier to comply with the appraisal provision and identify a competent appraiser to participate as mandated in the policy appraisal provision and also sues Defendant Northfield Insurance under Tennessee common law and statutory law and would show this Honorable Court¹ the following:

1. Plaintiff Cox's Paradise LLC as assignee ("Plaintiff"), is a corporation organized and existing under the laws of the State of Nevada with its principal place of business with its principal place of business at 1441 South Church Street Halls, Tennessee.

2. Defendant Northfield Insurance Company ("Defendant") is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business in St Paul Minnesota and may be served with process pursuant to Rule 5 on counsel of record.

¹ This Court has subject matter jurisdiction of this action pursuant to 28 USC § 1332 (Diversity). Venue is proper in this district as the Defendants all reside or are deemed to reside in this district pursuant to 28 USC § 1391.

3. Defendants issued Policy No. WS280071 DLA, LLC, the owner of the insured location of 1441 South Church Street Halls, Tennessee, and that was in effect on the date of loss of July 17, 2020. A copy of the policy is found at DE 6-1.

4. On or about July 17, 2020 the insured premises was severely damaged by high velocity winds and hail.

5. DLA, LLC timely filed a claim with Defendant under claim no. F3C322. Northfield admitted that the DLA submitted a claim after the weather event. DE 6, Page ID 23-24.

6. Mr. William Griffin, the public adjuster prepared an estimate of costs for the damage and DLA submitted the proof of loss.

7. On December 9, 2020 DLA effectively assigned its post-loss claim rights to Plaintiff. DE 1-1, Page ID via paragraph 17 of the real estate purchase contract which is attached herewith as Exhibit 1.

8. DLA completed all conditions precedent.

9. Damage from the wind and hail are covered perils and the defendant admitted damage but undervalued the claim.

10. On September 30, 2022, Plaintiff invoked the appraisal clause in writing upon the entrance of current counsel.

. **COUNT I COMPEL APPRAISAL AND APPOINT UMPIRE**

11. The operative policy provides for contractual appraisal rights as alternative dispute resolution. DE 6-1, Page ID 57.

12. Both parties are entitled to an expeditious appraisal, pursuant to the policy language, with two competent appraisers and an impartial umpire, as these three are essential to an effective and fair process.

COUNT II. UMPIRE QUALIFICATIONS

13. Although the policy provision does not outline the criteria to be used in the umpire selection process "Generally accepted insurance principles dictate only that 'an umpire selected to arbitrate a loss should be disinterested, unprejudiced, honest, and competent. '" *Brothers v. Generali Us. Branch*, No. CIV.A. 1:97-CV-798-MHS, 1997 WL 578681, at *3 (N.D. Ga. July 11, 1997) (quoting 6 Appleman, Insurance Law and Practice § 3928, at 554 (1972)). The umpire "should be impartial, honest, and competent, and should not live an unreasonable distance from the scene of the loss." Corpus Juris Secundum, Insurance § 1897 (2011) See, e.g., 6 Appleman, Insurance Law and Practice § 3928, at 554 (1972); Corpus Juris Secundum, Insurance § 1897 (2011).

14. Petitioner respectfully proposes the well-qualified individuals below who have no business or personal relationships with either party, and meet the criteria described herein.

- a) **Ben Perry – TN / Dir. Of Appraisals – CV to be provided if no agreement to appraisal or umpire can be reached.**
- b) **Scott Heidelberg – TN – Certified PLAN Ump/Appr- CV to be provided if no agreement to appraisal or umpire can be reached.**
- c) **Andy Fraraccio – Intrust Claims – CV to be provided if no agreement to appraisal or umpire can be reached.**
- d) **Zach Baker – TN - The David Group - Certified Umpire – CV to be provided if no agreement to appraisal or umpire can be reached.**
- e) **Mary Jo O'Neal – TN/Ind. Adj./- Certified Umpire- CV to be provided if no agreement to appraisal or umpire can be reached.**
- f) **Chris Williamson – TN – Restoration GC – CV to be provided if no agreement to appraisal or umpire can be reached.**

g) **David Hilsdon – Lic. Engineer, P.E. TN – CV to be provided if no agreement to appraisal or umpire can be reached. .**

15. This Honorable Court is authorized by the consent of the parties', and as outlined in the policy appraisal provision, to choose an impartial umpire and/or a competent appraiser, if necessary, upon the request of either party.

COUNT III BREACH OF CONTRACT

16. The Plaintiff incorporates the foregoing allegations as if fully set forth herein.

17. Defendant materially breached the insurance contract by failing to agree to the appraisal process when properly demanded and materially undervaluing the claim failing to pay the true value of the loss consistent with the loss payments claim, DE 6-1, Page ID 57-58 and not following its own valuation provisions.

WHEREFORE, ALL PREMISES CONSIDERED, PLAINTIFF requests the court enter an order to compel appraisal, appoint umpire, award pre-judgment interest, post-judgment interest, compensatory damages, of no less than THREE MILLION DOLLARS.

Respectfully submitted,

/s/Drayton D. Berkley
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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that the foregoing document has been served upon the following counsel of record or parties pro se in this cause **ONLY BY ELECTRONIC TRANSMISSION** to the following:

S. Newton Anderson, Esq.
SPICER RUDSTROM
119 South Main Ste 700
Memphis, TN 38103

This, the 13th day of June 2023

/s/Drayton D. Berkley
Drayton D. Berkley